

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

JTH TAX LLC d/b/a LIBERTY TAX SERVICE,

Plaintiff,

v.

CHARLES GAUSE and GAUSE ENTERPRISES
LLC d/b/a MR. CHARLES TAX,

Defendants.

Case No.: 3:21-cv-543-FDW-DCK

**LIBERTY'S MOTION IN THE
ALTERNATIVE FOR
SUMMARY JUDGMENT**

Plaintiff JTH Tax LLC d/b/a Liberty Tax Service (“Liberty”), respectfully moves this Court in the Alternative for Summary Judgment against Defendants Charles Gause (“Gause”) and Gause Enterprises, LLC d/b/a Mr. Charles Tax (“Gause Enterprises”). In support of its motion, Liberty states the following:

1. Liberty filed its Verified Complaint on October 13, 2021, alleging material breaches of several Franchise Agreements by Defendants.

2. Liberty brought six claims against Defendants seeking monetary damages and injunctive relief.

3. Discovery in this matter concluded on November 15, 2022, and the deadline for dispositive motions is December 7, 2022. [DE 53].

4. Prior to the attorney for Defendants withdrawing, this Court dismissed Defendants’ counterclaims against Liberty. [DE 43].

5. Liberty engaged in substantial discovery that it completed prior to the deadline.

Defendant served one set of discovery requests in connection with its counterclaim.

6. The evidence produced in discovery and Defendant Gause's deposition demonstrates that Defendants actively competed with Liberty both while Defendant Gause was an active franchisee, and immediately after Liberty terminated the franchise agreements.

7. As outlined in Liberty's Memorandum of Law in support of this motion, and the documents attached thereto, Defendants affirmatively decided to leave Liberty while the Franchise Agreements were still in effect and used Defendant Gause Enterprises as a vehicle to poach employees and customers from Liberty in violation of Gause's covenant not to compete with Liberty or solicit its customers or employees.

8. By actively competing with Liberty having full knowledge and awareness the Franchise Agreements were still in effect, Defendants caused Liberty harm in the form of lost royalties and advertising fees, lost customer goodwill, and stolen customers who sought tax preparation services from Liberty.

9. In setting up their competing business, Defendants relied on and used Liberty's confidential information and trade secrets without authorization and Liberty was damaged as a result.

10. Defendants conduct converted Liberty's own confidential information and used it against Liberty to unjustly enrich themselves at Liberty's expense and unfairly compete with Liberty by poaching its customers and employees.

11. As outlined in Liberty's memorandum of law, there is no factual dispute concerning Defendants intentional breach of the Franchise Agreement to compete with Liberty, thereby depriving Liberty of customer goodwill and pecuniary gain.

THEREFORE, Liberty respectfully moves the Court to enter an Order as follows:

1. Entering Summary Judgment against all Defendants and awarding the relief sought in the Verified Complaint, including a permanent injunction and money damages for \$65,920.00 with pre- and post-judgment interest; and
2. Any other relief this Court deems just and proper.

Respectfully submitted this 7th day of December, 2022

GORDON REES SCULLY MANSUKHANI, LLP

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CERTIFICATE OF SERVICE

I CERTIFY that on this 7th day of December, I electronically filed the foregoing **LIBERTY'S MOTION FOR SANCTIONS AND DEFAULT JUDGMENT** with the Clerk of Court using the CM/ECF system which will send notification to such to all counsel of record. I further certify that I caused a copy of the foregoing to be served on unrepresented parties, via U.S. Mail, in a postage-paid envelope addressed as follows:

Mr. Charles Gause
7016 McLothian Lane
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charles@gauseassociates.com
Pro Se Plaintiff

This the 7th day of December, 2022.

GORDON REES SCULLY MANSUKHANI, LLP

By: /s/ Allison J. Becker
Allison J. Becker